

June 1, 2006

The Honorable Lori Edwards
Polk County Supervisor of Elections
P.O. Box 1460
Bartow, Florida 33831-1460

RE: DE 06-08
Absentee Ballots: §§ 101.68, 101.69
and 104.18, Florida Statutes

Dear Ms. Edwards:

This is in response to your request for an advisory opinion. You are the Supervisor of Elections for Polk County and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has authority to issue an opinion to you.

You have asked essentially the following questions:

1. If a registered elector votes an absentee ballot and returns it to the supervisor of elections office in the county where registered, then relocates to another county in Florida and changes his or her registration to that county before the election:
 - a. Can the Canvassing Board at the original county count the absentee ballot?
 - b. Can the elector vote absentee in the county to which he or she has relocated?
 - c. Can the elector vote early in the county to which he or she relocated?
 - d. Can the elector vote on Election Day at his or her polling place in the county to which he or she relocated?
2. Same questions as in 1., but the elector relocates within the original county but moves from one legislative district to another?

The short answer to Question 1 a. is yes. The short answer to Questions 1 b. through 1 d. is no. The answers to Question 2 would mirror the answers to Question 1.

As to Question 1, section 101.68 (1), Florida Statutes, states:

The supervisor of the county where the absent elector resides shall receive the voted ballot, at which time the supervisor shall compare the signature of the elector on the voter's certificate with the signature of the elector in the registration books to determine whether the elector is duly registered in the county and may record on the elector's registration certificate that the elector has voted. However, effective July 1, 2005, an elector who dies after casting an absentee ballot but on or before election day shall remain listed in the registration books until the results have been certified for the election in which the ballot was cast. The supervisor shall safely keep the ballot unopened in his or her office until the county canvassing board canvasses the vote. **After an absentee ballot is received by the supervisor, the ballot is deemed to have been cast,** and changes or additions may not be made to the voter's certificate. [Emphasis added.]

Section 101.68(1), Florida Statutes, makes it very clear that an absentee voter has cast their ballot when it is received by the supervisor. As a result, upon receipt of the absentee ballot by the Supervisor of Elections, the voter has voted in that election. It then follows that the critical determination with regard to whether the voter was eligible to cast their ballot in the election must coincide with the date that the ballot is actually cast.

By way of comparison, the determination regarding a voter's eligibility to cast a ballot on any given day during the early voting period is made based upon the voter's status when they present themselves to cast their ballot at the early voting site. If they are eligible on that particular day, they are permitted to cast a ballot which is immediately tabulated. That ballot is not held for an eligibility determination to be made based upon their actual eligibility on Election Day.

Therefore, with regard to Question 1 a., the voter in your scenario was eligible to vote on the day that their ballot was cast. The County Canvassing Board in the original county can count the absentee ballot cast by that voter.

Since the voter has already voted in the election, the voter could not be permitted to vote again. Section 101.69, Florida Statutes, states in pertinent part that, "[a]n elector who has returned a voted absentee ballot to the supervisor...is deemed to have cast his or her ballot and is not entitled to vote another ballot or to have a provisional ballot counted by the county canvassing board." Further, voting more than one ballot at any election is prohibited by section 104.18, Florida Statutes. Therefore, where a voter has returned a voted absentee ballot to the supervisor of elections the voter could not vote absentee in the county to which he or she has relocated before the actual election, the voter could not early vote in the county to which he or she relocated and the voter could not vote at their precinct in the new county on Election Day.

Finally, applying the same reasoning as stated above, the answers to Question 2 would mirror the answers to Question 1.

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SUMMARY

Upon receipt of the absentee ballot by the Supervisor of Elections, the voter has cast their ballot and is considered to have voted in that election. If the voter was eligible to vote on the day the absentee ballot was received by the Supervisor, the County Canvassing Board can count the absentee ballot cast by that voter. If the voter then moves to another county after casting their absentee ballot, but before Election Day, they would not be permitted to cast an absentee ballot, early vote or vote at the precinct on Election Day in the new county.

Sincerely,

Dawn K. Roberts
Director, Division of Elections

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DKR/SDL/lmg